

APPENDIX C

NORFOLK SOUTHERN CLASS ACTION SUMMARY

In re East Palestine Train Derailment Class Action Settlement

The Class Action Settlement provides for a non-reversionary \$600 million fund for the benefit of individuals and businesses within a 20-mile radius of the derailment, inclusive of attorneys' fees and costs. Three types of payments are available to class members:

- **Direct Payments.** The Settlement provides for direct payments to individuals on a per-household basis. With the exception of business loss (discussed below), this provides compensation for all claims released by the class settlement, including, among others, negligence, trespass, nuisance, property diminution, inconvenience, medical monitoring, to be distributed fairly among class members based on over a dozen different categories of information and data.
 - In their proposed Plan of Distribution, class counsel provided examples of individualized direct payments to households based on their specific circumstances (Dkt. 519-1 at 9-10),¹ including:
 - \$77,602 to an East Palestine household
 - \$13,703 to a household living 7.3 miles from the derailment
 - \$310 to a household living 13.8 miles from the derailment
 - In their proposed Plan of Distribution, class counsel set out a preliminary allotment of \$265 million for this payment category. Dkt. 519-1 at 7.
- **Voluntary Personal Injury (or Voluntary Exposure Supplement) Payments.** The Personal Injury Payment (or Voluntary Exposure Supplement, as referred to in class counsel's motion) is an *additional, voluntary* benefit made available on an individual basis to settlement class members within 10 miles of the derailment, in exchange for an individual personal injury release.
 - This payment category is entirely voluntary, in the discretion of each individual eligible settlement class member. Settlement class members who choose not to affirmatively participate preserve any personal injury claims against Norfolk Southern and any other potentially responsible party. Moreover, settlement class members are not required to participate in order to receive any other benefits in the settlement (*i.e.*, direct payment or business loss payments).
 - Eligible settlement class members do not need proof of injury to participate; the settlement assumes that everyone physically present within 10 miles of the derailment is qualified to receive this additional payment in exchange for a release of personal injury claims.

¹ All citations to the Docket are to filings in the class action, *In Re: East Palestine Train Derailment*, Case No. 4:23-cv-00242-BYP.

- In their proposed Plan of Distribution, class counsel provided examples of individualized personal payments to households based on their specific circumstances (Dkt. 519-1 at 11), including:
 - \$35,437.50 to an East Palestine resident
 - \$10,312.50 to an individual living 3.4 miles from the derailment
 - \$1,500 to an individual living 7.3 miles from the derailment
- In their proposed Plan of Distribution, class counsel set out a preliminary allotment of \$120 million for this payment category. Dkt. 519-1 at 7.
- **Business Loss Payments.** Business loss payments are available to businesses upon a showing of actual net business loss, as determined by individualized review by the settlement administrator.
 - In their proposed Plan of Distribution, class counsel set out a preliminary allotment of \$25 million for this payment category. Dkt. 519-1 at 7.

In addition to the Settlement benefits, settlement class members are also eligible to participate in the Community Health Program (CHP) under the Consent Decree, including the medical monitoring program and receiving access to mental health services, to the extent the individuals meet the eligibility criteria under the CHP. There is no limitation on individuals seeking to access both Class Action Settlement and Consent Decree benefits.

Of the estimated more than 450,000 individuals in the class area, comprising more than 190,000 households, and 15,000 businesses, a very small percentage have objected or opted out. As of September 3, as class counsel's motion for final approval details:

- There have been only 82 household opt-outs from within two miles of the derailment, 370 total household opt-outs from the entire class, and 47 total business opt-outs. These represent only 1.35%, 0.18%, and 0.31% of the totals, respectively. Dkt. 518-1 at 20.
- Less than 0.018% of settlement class members (86 out of over 450,000) submitted objections, with many of the objectors represented by a single firm. Dkt. 518-1 at 20.
- Over 97% of the estimated 4,739 East Palestine residents filed claims for the voluntary Personal Injury component of the Settlement. Dkt. 518-1 at 26-27.